

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 143 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes.
2. To be referred to the Reporter or not? No.

J

3. Whether Their Lordships wish to see the fair copy of the judgement? No.
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No.
5. Whether it is to be circulated to the Civil Judge?
No.fs

NOBATSINH MATHURAPRASAD RAJPUT

Versus

STATE OF GUJARAT

Appearance:

MR BS SUPEHIA, appointed though legal aid
for appellant.
MR SP DAVE, A.P.P. for Respondent.

CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 02/04/98

ORAL JUDGEMENT

1. The appellant, accused Nobatsinh Mathuraprasad Rajput in Sessions Case No. 174 of 1994 stood charged with the offence punishable u/s 364 r/w/s 114 of the IPC before the learned Additional Sessions Judge, Surat at Vyara who by the impugned judgment and order dated 13th January, 1995 convicted the accused of the offence punishable u/s 363 of the Indian Penal Code (IPC for

short) and sentenced him to undergo rigorous imprisonment for a period of five years and to pay fine of Rs. 5,000/- and i/d to undergo rigorous imprisonment for a period of one year.

2. The learned Additional Sessions Judge has observed that the offence punishable u/s 364 of the IPC could not said to have been established as no material was placed on record to show that the accused intended to cause murder of the kidnapped child Shahun and therefore the learned Additional Sessions Judge convicted the accused for lighter offence punishable u/s 363 of the IPC and sentenced him accordingly.

3. The facts of the prosecution case might be gathered from the judgment of the trial court :

Complainant Akhtar Hussain Mukhkhukhan Pathan, resident of village Baleswar Taluka Palsana, District Surat had gone to his place of business running in the name and style of Supreme Transport Company located at village Kadodara since three years prior to the incident. Shahun who happened to be cousin of the complainant was living with him and he was kept as his child. He has also his own son Tarik by name. On 13th June, 1994 the complainant had gone to the place of his business. During noon hours of that day Tarik and Shahun had gone to mosque for offering prayer (Namaz). At about 5-00 O'clock the complainant received telephonic message in his office telling him that his elder son had been kidnapped and he should bring Rs. 1 lac in Udhana Godown at about 8-00 O'clock at night if he wanted to see the child released. The telephonic message was repeated within a short time. Thereupon, he went to his residence and inquired about the children Tarik and Shahun who had gone for prayer at about 2-30 in the afternoon. He found that Tarik had returned but Shahun had not. Upon asking Tarik he was informed that two motorcyclists had taken Shahun on the motorcycle. Subsequently, the complainant went with a bag containing money to Udhna yard. Nobody, however, appeared there for receiving money and for handing over the child. Consequently, the complainant had an occasion to go to Palasana Police station for lodging his complaint. On his complaint P.S.I. Mr. Jahangir Roshansha Diwan registered the offence and initiated investigation. On 14th June, 1994, the next day, the complainant had again received a telephonic message that he should bring the amount of Rs. 1 lac to the bus stand no. 5 of Linear bus stand at Surat. At about 2-30 O'clock in the afternoon. The complainant informed P.S.I. Mr. Diwan about the same. Thereupon,

P.S.I. Mr. Diwan along with the complainant and two panchas proceeded to Linear bus stand and in the process of laying trap he sent a wireless message asking LCB and ATS PSIs to keep a watch on Linear bus stand at Surat. LCB and ATS P.S.I. Mr. Subersing Gurdayalsing Yadav and Mr. M.D. Roy had accordingly taken their position in civil dress. P.S.I. Mr. Diwan had also taken his position along with the panchas in civil dress. The complainant informed to give pre-arranged signal as soon as he was contacted by the accused. At about 2-30 in the afternoon the accused contacted the accused and demanded money. He took the complainant near a wall situated near railway line. The complainant followed him where the accused demanded the money. The complainant put the bag on the wall and asked for the child. But the child was not available at that point of time. At the same time on receipt of the signal from the complainant, P.S.I. Mr. Diwan, P.S.I. Mr. Yadav and P.S.I. Mr. Roy, two panchas and other police persons reached the site and the police persons ultimately caught hold of the accused. Panchanama in respect of the accused was prepared. Thereafter, the accused was brought to Delhi Gate Police Choki where he was interrogated. Since the accused expressed his readiness to show the kidnapped boy preliminary panchanama was prepared in that respect. The accused informed that the kidnapped child had been kept in a field in the sim of village Baleswar. Hence, after preparation of preliminary panchanama in that respect, the complainant, panchas and concerned police officers went in a jeep to the place where the child was kept as shown by the accused. The accused had taken them to the field where the kidnapped child Shahun was kept. They found the child with his hands and legs tied with the ropes and his mouth tied with cotton strip. The child was tied with standing crop of sugarcane. The complainant identified Shahun. Thereafter, the remaining part of the panchanama was prepared. The ropes and cotton strip were removed and seized. Shahun was sent for medical examination.

4. Thereafter, the accused had shown his willingness to show the place from where the child was kidnapped. Once again panchanama was prepared in that respect. The accused led the the complainant, panchas and police officers to the place from where the child Shahun was kidnapped. He accordingly took them to village Baleswar where he had shown the place near the mosque. On that place panchanama in respect of scene of offence, namely, the place from where the child was lifted was prepared. The accused was then arrested and produced before the concerned Judicial Magistrate, First Class, at Bardoli

and upon conclusion of investigation the charge sheet was filed in the Court of Judicial Magistrate, First Class Bardoli, who by his order dated 19th September, 1995 committed the case to the Sessions Court, Surat. As stated above, upon conclusion of the trial and hearing the submissions on behalf of both the sides, the learned Additional Sessions Judge convicted and sentenced the accused as stated above. The accused has subjected the said judgment and order to challenge in this appeal before this Court.

5. Mr. Supehia has drawn my attention to the stand of the accused by reading para 7 of the impugned judgment where the submissions made on behalf of the accused have been noted by the learned Additional Sessions Judge briefly stating that the defence was one of denial. It was submitted in support of such defence that there were contradictions and inconsistencies in the evidence of the complainant and other witnesses as set out at length in para 7 of the impugned judgment. Accordingly, it has been submitted here that the prosecution has failed to establish the case against the accused beyond reasonable doubt. For the purpose of making good the submissions, the evidence of the witnesses has been read before this Court and also in order to appreciate the submissions made on behalf of the appellant it would be appropriate to set out the prosecution evidence. The prosecution has examined following witnesses before the learned Additional Sessions Judge.

i. P.W. No. 1 Gamanlal Harkishandas
Lapsiwala, Exh. 7.

ii. P.W. No. 2 Akhtarhussain Mukhkhukhan
Pathan, Exh. 8.

iii. P.W. No. 3 Dr. Shantilal Dahyabhai
Sindha, Exh. 10.

iv. P.W. No. 4 Rajnikant Arvindbhai
Panchal, Exh. 12, who is a pancha
witness.

v. P.W. No. 5 Mahmad Amin Abdul Rashid
Shaikh, Exh. 16.

vi. P.W. No. 6 Subersing Gurudayalsing
Yadav, P.S.I., Surat (Rural), A.T.S. Exh.
17.

vii. P.W. No. 7 Jahangir Roshansha Diwan,
P.S.I., Palsana Police Station, Exh. 18.

6. The prosecution has placed on record the following documents :

- i. Complaint dated 13-6-1994 exh. 9.
- ii. Medical certificate dated 14-6-1994
exh. 11.
- iii. Panchanama dated 14-6-1994 exh. 13, which
is in two parts.
- iv. Panchanama dated 14-6-1994 exh. 14 which
is also in two parts.
- v. Panchanama dated 16-4-1994 exh. 15.

7. Mr. Supehia read before me the evidence of the complainant Akhtarhussain Mukhkhukhan Pathan in the first instance. He read the evidence of the complainant in the context of the defence as appearing in the further statement of the accused to the effect that the accused was serving in the concern/firm of the complainant who was giving him salary of Rs. 400/- to Rs. 500/- p.m and since he had demanded minimum wages in accordance with law and threatened him to file the case under the Minimum Wages Act, he was falsely implicated in a false case of kidnapping. The complainant in his evidence, however, has been cross-examined about the accused serving in his concern/firm running in the name and style of Supreme Transport Company. The complainant has admitted this fact while deposing that there were in all 80 employees in his concern/firm and that the accused was being paid Rs. 500/- by way of salary, that the accused had served the concern/firm only for a period of six days and that he was not in permanent employment of the complainant. He denied the suggestion that the accused had threatened him to take him to the Court for his rights under the Minimum Wages Act. He also denied the suggestion that the accused had demanded over time and bonus from him. He then denied the suggestion that in order to drive out the accused from the service the accused was falsely implicated in the kidnapping case. He also denied the suggestion that with a view to defeat the claim of the accused in the Labour Court and with a view to drive him out from the job, false case was filed against him. At the very stage, it should be noted that Mr. Supehia was not in a position to show from the evidence placed on record any material which would indicate any legal action

in any of the Labour Courts taken by the accused. Mr. Supehia is also not in a position to show any material from the prosecution evidence that the accused was in permanent employment of the complainant. He was also not in a position to show that the accused had served the complainant for a period of longer duration than the short period of six days as deposed by the complainant. Bearing in mind such state of evidence vis-a-vis the defence of the accused, the evidence of the complainant has to be examined. The complainant has deposed to the facts of the prosecution case, as noted above. However, it has been submitted that the complainant had spoken number of phone calls he received on 13-6-1994. Whereas, this fact is not corroborated from other evidence, namely, evidence of witness Gamanlal Harikishandas Lapsiwala exh. 7. It might be noted that simply because Gamanlal Harikishandas Lapsiwala has stated that there was one or more occasions for the accused to have telephoned from his booth (booth of Gamanlal) it cannot be assumed that the complainant was telling lie before the Court for having received number of phone calls. It is possible that the accused might have used more than one telephone booths or telephone places for contacting the complainant. That would go to indicate that what the complainant says about receipt of number of phone calls on 13-6-1994 cannot be doubted. With regard to Gamanlal's evidence it has been submitted that in absence of the register in which Gamanlal was making note of customers using telephone booth for telephoning the respective persons his evidence cannot be accepted. It is not in dispute that the prosecution had taken xerox copy of the note from the register with regard to the accused having contacted the complainant on particular telephone number. It is not the submission of Mr. Supehia that the accused was not given such zerox copies. Thus, it is a fact that the register of the customers using the telephone booth was being maintained by witness Gamanlal Harikishandas Lapsiwala and simply because the register was not produced before the Court it should not be assumed that what witness Gamanlal Harikishandas Lapsiwala was deposing before the Court was not true. It would, therefore, clearly appear that the complainant's version about he having received telephone calls gets support from the evidence of witness Gamanlal Harikishandas Lapsiwala who clearly appears to be an independent witness and cannot be said to be under police influence as has been argued by Mr. Supehia.

8. Mr. Supehia then referred to the complainant's evidence for the purpose of pointing out some discrepancies about the complainant having informed some

police officer at Mahidharpura Police Station. Whereas the evidence of the police officer would indicate about receipt of message for filing of the complaint at some other police choki/police station. It might be noted that the complaint exh. 9 has been filed before P.S.I., Palasana Police Station and the details with regard to lodging of this complaint might be noted from the evidence of P.W. No. 7 Jahangir Roshansha Diwan Exh. 18. The complainant has not stated that he did not have any occasion to file the complaint on 13-6-1994 and of sending repeated message to the police station on 14-6-1994. All those facts would transpire from the complaint exh. 9 itself as well as from the evidence of the concerned police officer. The complainant has not denied such facts in his cross-examination. Therefore, even if the complainant had an occasion to make reference to Mahidharpura Police Station as appearing in para 3 of his evidence, that would not go to show that the complainant has not stated truth before the Court. Even in respect of such contradictions the learned Additional Sessions Judge has rightly observed that they would be quite minor and hardly any notice can be taken for dislodging prosecution story.

9. Mr. Supehia has then pointed out the message which was given by the complainant. It referred to the complainant's elder son and in this context a reference was made to the complainant's own son Tarik by name aged about 5 years. It has been submitted that the accused might be knowing who was Tarik and who Shahun was. In the present case, there is charge of kidnapping Shahun and not complainant's son Tarik. That is how, a false case is alleged to have been filed against the accused. This submission cannot be accepted inasmuch as it can hardly be inferred that the accused was knowing complete details and particulars about the family of the complainant. At best it might be inferred that the accused might be knowing about the complainant having one or two sons as the complainant had in his family his son Tarik and his cousin Shahun who was also being kept as the complainant's son in the family. The accused might have had an occasion to lift Shahun from the place of the incident. From the evidence which has been placed on record it has clearly appeared that Shahun was kidnapped. Simply because the accused had some occasion to serve the concern/firm of the complainant it could not be inferred that he was knowing both Tarik and Shahun and therefore as per the prosecution case he could have kidnapped Tarik and not Shahun and therefore story of kidnapping Shahun has been made out for falsely implicating him.

10. Mr. Supehia then referred to certain parts of the evidence of the complainant. The learned Additional Sessions Judge has at length dealt with the complainant's evidence in the context of similar submissions made before him and for the reasons stated by the learned Additional Sessions Judge there is hardly any doubt which can be thrown against the complainant's version before the Court.

11. Dealing with the evidence of P.W. No.. 7 Gamanlal Harikishandas Lapsiwala it has been submitted that no test identification parade has been held so that the evidence of this witness could be accepted. In fact, in the cross-examination it has clearly appeared that the accused had a couple of occasions to use the telephone at the booth of the witness. At first the accused could not get the number. The witness therefore had an occasion to ask the accused what was the matter about and the accused replied that he was joining number at Kadodara but he was not able to get it. The witness therefore had an occasion to take number from the accused and to assist him in joining that number. On account of such incidents, this witness must have an impression of the accused fixed in his mind. Therefore, simply because the accused was taken to this witness at his telephone booth by the police it cannot be assumed that the witness was previously briefed as to who was the person who had joined relevant telephone number from his telephone booth. As a matter of fact, Gamanlal Harikishandas Lapsiwala appears to be an independent witness. He lends support to the evidence of the complainant in material respect.

12. Referring to the panchanama Mr. Supehia relied upon the timings which have been noted in the panchanama. It is no doubt true that there is span of 10 to 15 minutes available to the appellant to act as it can be noticed from the timings which have been pointed out by Mr. Supehia. However, the distances were not far off for the trap to be laid after available panchas were taken. Bearing in mind the facts of the case which revolve round the story stated by the prosecution witnesses, particularly witness Rajnikant Arvindbhai Panchal concerning the panchanama, I do not find anything unnatural about the timings which appeared on the face of the panchanama.

13. Rajnikant Arvindbhai Panchal has deposed to the facts concerning the panchanama as also to the facts which have been set out by the complainant. The incidents which are reflected from the panchanama have

taken place on 14-6-1994 itself. The accused was caught hold of on the spot as can be seen from the facts concerning the prosecution case. Further facts which could be gathered from the accused stood accomplished from what ultimately happened, as described in the panchanama. The boy was found from the field shown by the accused. He was also found tied in the ropes. Those facts are reflected in the panchanama and have been referred to by the pancha witnesses as well as Investigating Officer P. W. No. 6 Subersing Gurudayalsing Yadav Exh. 17. There is no reason to doubt the evidence of the pancha witnesses coupled with the panchanama exh. 13, 14 and 15 and the evidence of the Investigating Officer. It has been finally submitted that Linear bus stand of Surat is a busy place and number of independent witnesses could have available to the investigating agency. Instead, the panchas were arranged from other place and no independent witness has been examined. It should be born in mind that the message which the complainant received was with regard to the complainant to be contacted at Linear bus stand at a particular point of time and trap was to be arranged with required speed. Therefore, it was quite natural for the investigating agency to take the panchas who were available. It would be hazardous to take panchas from Linear bus stand. It would in all probability have resulted in failure of the trap. Hence, it cannot be said that the prosecution has not established the case beyond reasonable doubt in absence of so called independent witnesses. In my opinion, all the incidents which have occurred on 14-6-1994 as can be seen from the prosecution story have happened in quite natural course of events. It has been rightly submitted by the learned A.P.P. that the medical evidence of Dr. Shantilal Dahyabhai Sindha P.W. No. 3 exh. 10 coupled with his medical certificate exh. 11 clearly supports the prosecution story. He has rightly submitted that there is no reason for the pancha witnesses who had no enmity with the accused to tell lie. He has also rightly submitted that Dr. Shantilal Dahyabhai Sindha has no axe to grind against the accused. He has finally rightly submitted that the evidence of Dr. Shantilal Dahyabhai Sindha is quite natural and supports to the prosecution story. Child Shahun was found to have sustained following injuries.

- i. Dark brown bruise of 0.5 cm in breadth x 4 cm in length on right and left wrists and such injuries could have been caused by tying tightly some material like cotton bandage.

14. Dr. Shantilal Dahyabhai Sindha P.W. 3 exh. 10
has deposed that such injuries could be caused by the
muddamal article no. 1 rope and string which was used
for tying the hands of child Shahun.

15. Under the aforesaid circumstances, and for the
reasons stated hereinabove as also for the reasons stated
by the learned Additional Sessions Judge, the submissions
made on behalf of the appellant cannot be accepted. The
result is that the impugned judgment and order of
conviction deserves to be confirmed.

16. I have heard the learned advocate for the
appellant as well as learned A.P.P. for the State on the
question of sentence. Mr. Supehia submitted for showing
mercy to the appellant for reducing the sentence
undergone. However, considering the nature of the crime
and considering inhuman handling of the child for a
period of 24 hours by the accused and other person/s this
is not a fit case for showing any indulgence on the
question of sentence. Hence, following order is passed.

This appeal is dismissed.

-0-0-0-0-0-